IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1406 of 2007
To
FIRST APPEAL No. 1465 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 2 - Appellant(s)
Versus
PATEL JAYANTIBHAI VISDAS - Defendant(s)

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Appearance :
GOVERNMENT PLEADER for Appellant(s) : 1 - 3.
MR AJ PATEL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 05/04/2007

ORAL JUDGMENT

1. All the appeals are preferred against the judgement and award passed by the reference court dated 25.10.2005 in Land Acquisition Case No. 128 to 144 of 2004 and 306 to 348 of 2004, whereby the additional compensation at the rate of Rs. 30.50 per square meter for Jirayat/irrigated land is ordered to be paid and it is additionally ordered for payment of the solatium and interest at the rate of 9 percent for first year and 15 percent for the subsequent year on the additional compensation, including the amount under sections 23(2) and 23(1A) of the Land Acquisition Act (herein after referred as to “the Act”).
2. The short facts appear to be that, various lands situated at village Vagaroda of Kadi Taluka, were proposed to be acquired under the Act and ultimately the notification under section 4 of act was issued on 07.11.1996. Thereafter, the notification under section 6 of the act was published on 05.09.1997. It appears that, thereafter, the proceedings under section 9 of the act was undertaken, and ultimately under section 11 of the act, the award came to be passed by Special Land Acquisition Officer

(herein after referred to as “the LAO”). On 02.09.1999, the LAO granted compensation in the award at the rate of Rs. 3.91 per square meter for Jirayat/irrigated land. As the land owners were not satisfied with the compensation awarded in the award of the LAO and as they were insisting for additional compensation at the rate of Rs. 100 per square meter, the dispute was raised and ultimately the same came to be referred to the reference court for adjudication.

3. The reference court during the course of trial and at the time when the judgement came to be delivered, mainly relied upon the earlier order of the reference court in acquisition case of village Khavad-Vekra, and also considered that for the acquisition of village Vekra wherein, notification under section 4 of the act was published on 29.08.1991. After order of the reference court the Division Bench of this Court (Coram: Mr. Justice B.C. Patel and Mr. Justice Sharad D. Dave JJ.) confirmed the compensation at the rate of Rs. 22.00 per square meter vide judgement dated 19.09.2001, and therefore, the court has considered Rs. 22.30 paisa and the

court considered appreciation at the rate of 10 percent per year, and found that, the market value of the land would be Rs. 34.50 paisa by considering appreciation of Rs. 12.20 per square meter from 1991. In other words, as the LAO hasd awarded compensation at the rate of Rs. 3.91 paisa, the additional amount of compensation at the rate of Rs. 30.50 paisa per square meter was found proper by the reference court, and impugned judgement and award came to be passed. It is under these circumstances, the State has preferred the present group of First Appeals.

4. Heard Mr. Parikh learned AGP for the appellant and Mr. A.J. Patel Learned Advocate for the respondent-claimant. I have considered the record and proceedings of the reference court, which was called for pursuant to the earlier order passed by this court on 15.03.2007 when the appeals came to be admitted.

5. It appears that no error was committed by the reference court while relying upon its own judgement. In the earlier award, more particularly, when the reference court found that the evidence on the yield method is not satisfactory. However, it appears that, even if

principle for applying the view taken in the earlier matters for the land situated in the nearby area or nearby proximity is considered then also, two errors are committed by the reference court; one is of not making any destination in the valuation of the land for irrigated and non-irrigated land and the another is on applying principle by appropriate calculation based on the same both for the reasons as stated herein after.

6. The perusal of the judgement shows that the reference court used the language in judgement as Jirayat/irrigated land as if Jirayat/irrigated land are the same land. The land with irrigated facility is known as Bagayat or irrigated land. The land without any irrigated facility is known as Jirayat or non-irrigated land. No attempt is made on the part of the reference court to distinguish the valuation of the irrigated land and non-irrigated land.

7. It is by now well settled that, the difference between market value of the irrigated and non-irrigated land would be at about 25 per cent.

The irrigated land would have more increased with the valuation of 25 percent in comparison to non-irrigated land. The reference may be made to the decision of this court dated 04.04.2007 passed in First Appeal No. 1986 to 1999 of 1997, based on the decision of the Apex Court in case of **Kantaben Manibhai Amin v. Special Land Acquisition Officer, Baroda reported in AIR 1990 SC 103. T**herefore, it deserves to be observed that, even if, the market value of the agricultural land is to be assessed under the Act while awarding additional compensation, the irrigated land would be having 25 percent more market value than value assessed for non-irrigated land.

8. It appears that, village Vekra was in Kadi Taluka when notification under section 4 of the Act came be published on 29.08.1991 for the acquisition of the land. The aforesaid aspects appears to be from the decision of the Division Bench of this Court dated 19.09.2001 passed in First Appeal No. 1320 of 2001 and allied matters. It appears that, in the said decision

of Division Bench, this court relied upon the factum that, village Khavad and village Vekra are situated at the same vicinity. In the said decision, the Division Bench of this Court has relied upon another decision of the Division Bench of this Court dated 30.04.2001. Therefore, Rs. 22.30 paisa per square meter for the land at village Veda was confirmed by the earlier Division Bench of this court. In the said case, based on the same, for the land of Khavad, of which the notification under section 4 of the act was published on 16.03.1998, this court confirmed the assessment of the market value at the rate of Rs. 39.00 paisa per square meter. If reverse reduction is considered in the market value of the land at the rate of Rs. 10 percent per annum from date 16.03.1998 to 07.11.1996 for 1 ½ years (15 per cent from Rs. 39 per square meter) it would be roughly Rs. 33 per square meter as the land in question is situated at village Vagaroda form a part of the present Kadi Taluka.

9. It may also be recorded that, another village

Khavad in respect of which notification for acquisition under section 4 of the act was published on 16.03.1998, the another Division Bench of this court (Coram: Mr. Justice J.M. Panchal and Mr. Justice Bankim N. Mehta JJ.) in the First Appeal No. 94 to 107 of 2006 decided on 25.04.2006 had confirmed market value at the rate of Rs. 39 per square meter of the said land as observed earlier. If, reverse reduction is considered in the market value of the land as on 07.11.1996 it would be approximately at the rate of Rs. 33 per square meter.

10. If, it is viewed from the appreciation at the rate of 10 percent per year by taking the base of the value of the land confirmed by the Division Bench of this Court in the judgement dated 19.09.2001., in respect of the land situated at village Vekra, for which notification under section 4 of the act, came to be published on 29.08.1991, the reference court has made calculation by taking base strictly at the rate of Rs. 2.23 per year for the purpose of appreciation of five years, and has concluded at

the rate of Rs. 34.50 paisa per year as the market value.

11. Mr. Patel, learned Advocate for the original claimant has declared before this court that, the claimant is ready to restrict the claim at the rate of Rs. 33 per square meter, even if the criteria of reverse reduction is considered on the basis of the recent decision of the another Division Bench of this court dated 25.04.2006 in First Appeal No. 94 of 2006 and others in respect to land situated at village Khavad.

12. If the map is taken into consideration of village Kadi, it appears that, village Khavad and village Vagaroda are in the same taluka. In any case, the land situated at village Vagaroda can be considered as of the near by proximity and the Learned Assistant Government Pleader is not in position to show any reliable circumstances for different criteria to be adopted for assessing valuation of the land situated at village Khavad and Vagaroda except that, in between there are villages situated. The map shows that village Khavad is in the

adjoining area to the pakka road in the taluka shows as of village Vagaroda. Therefore, considering the facts and circumstances it appears that, the land situated at village Khavad in respect of which the decision came to be confirmed earlier by the Division Bench of this Court can be treated as that of the land of nearby proximity for the lands in question which are situated at village Vagaroda and in any case both situated in Kadi taluka.

13. It appears that, the distance between village Vagaroda and Khavad is not much and in between there is one village Vekra on the southern side and on northern side there is a village Bhalti and boundary of village Khavad is adjoining to village Vekra, and the boundary of village Vagaroda. Therefore, it can be reasonably said that, village Vagaroda is in the near proximity and situated in the nearby area to the land of village Khavad.

14. Under the above circumstances it appears that, the market value of the land can be assessed at the rate of Rs. 33 per square meter for the land

situated at village Vagaroda of land in question on the date when the notification under section 4 of the order published on 07.11.1996. However, such valuation at the rate of Rs. 33 per square meter would be of irrigated land. As observed earlier, if 25 percent reduction of the valuation is considered from the value of the irrigated land at the rate of Rs. 8.25 per square meter if deducted the amount of valuation of non-irrigated land, would come to Rs. 24.75 paisa per square meter.

15. As against the same, reference court has ordered compensation on the basis of the market value assessed at the rate of Rs. 34.41 paisa and therefore, the judgement and award passed by the reference court deserves to be modified to that extent.

16. In view of the aforesaid observation and the discussion, it is observed and held that, the market value of the land in question on the date of notification under section 4 of the Act on 07.11.1996 is fixed at the rate of Rs. 33.00 paisa for irrigated land and Rs. 24.75 paisa for

non-irrigated land. Out of the said amount since the LAO has paid the compensation at the rate of 3.91 paisa per square meter, for irrigated land net compensation would be Rs. 29.09 paisa per square meter and for non-irrigated land Rs. 20.84 paisa per square meter. Hence, ordered accordingly.

17. The other part of the judgement of the reference court, so far as awarding 30 percent for solatium, interest at the rate of 9 percent for the first year, and at the rate of 15 percent per annum for the subsequent period until the amount is paid or deposited, and the additional compensation including the amount of the increase at the rate of Rs. 12 percent per annum in the market value are not interfered. However, it is clarified that on account of the reduction of the principal amount of the additional compensation at the rate of Rs. 29.09 and Rs. 20.84 for irrigated and non-irrigated lands respectively the soletium at the rate of 30 percent, increase at the rate of 12 percent per annum in the market value and the interest at

the rate of 9 percent and 15 percent, as the case may be, shall get proportionately reduced.

18. The appeals are partly allowed to the aforesaid extent.

19. Before parting with, it deserves to be observed that, when in the land acquisition matters the appeals are being filed on behalf of State, as the public exchequer is directly concerned to the same, it is expected from the Government Pleader or the Assistant Government Pleader appearing in the matter to provide full and sufficient assistance to the court, not only to justifying the duty as the Government Pleader or Assistant Government Pleader, as the case may be, but to properly take care of public money. It may be that, the Government Pleader may represent State as the advocate in the court, but the matter is not simply as that of by the advocate and the client. He is also the Law Officer governed by the provisions of the rules and such authority is coupled with the public duty. If no proper assistance is being rendered resulting into adverse effect to the interest of

the Government, it would be for the Law Secretary, or the Chief Secretary of the State, as the case may be to take appropriate suitable remedial measures.

20. This court would have considered the matter further but Mr. Sunit Shah, Learned G.P. and Mr. Chhaya, Learned A.G.P. have assured that in future in land reference matters proper assistance shall be rendered and, therefore, I leave the matter at that stage, expecting the improvement at their end.

(JAYANT PATEL,J.)

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